

1 IN THE SUPERIOR COURT OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SACRAMENTO
3 HONORABLE THOMAS M. CECIL, JUDGE, DEPARTMENT 23

4 ---oo---
5 THE PEOPLE OF THE STATE OF CALIFORNIA,)
6)
7 -vs-)
8 FREDERICK ONEAL CLARK,)
9)
10 Defendant.)
11 ---oo---
12 REPORTER'S TRANSCRIPT OF DAILY PROCEEDINGS
13 TESTIMONY OF
14 **JAMES FALLMAN**
15 ---oo---
16 FRIDAY, OCTOBER 18, 2002
17 ---oo---
18 APPEARANCES:
19 For the People:
20 JAN SCULLY, District Attorney for the
21 County of Sacramento,
22 State of California,
23 By: FRANK C. MEYER
24 Deputy District Attorney
25 For the Defendant:
26 MARK D. MILLARD, Attorney at Law
27 Sacramento, California
28 ---oo---
29 Araceli Plasencia, CSR No. 8687

COPY

Number 99F09138

1 I N D E X

2 ---oo---

3 FRIDAY, OCTOBER 18, 20024 PROCEEDINGS OUT OF THE PRESENCE OF THE JURY RE
5 VIDEO LINK CONDITIONAL EXAMINAITON3.
6 WITNESS FOR THE DEFENDANT:

7 (Via video link technology)

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1 FRIDAY, OCTOBER 18, 2002

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3 In the matter of the People of the State of
4 California vs. FREDERICK ONEAL CLARK, Defendant, Court
5 Number 99F09138, came on this day before the Honorable
6 Thomas M. Cecil, Judge of the Superior Court of California,
7 in and for the County of Sacramento, sitting in
8 Department 23.

9 The People were represented by Frank C. Meyer,
10 Deputy District Attorney.

11 The Defendant was not personally present, but was
12 represented by Mark D. Millard, Attorney at Law.

13 The following proceedings were then had via video
14 link:

15 (NO JURY PRESENT)

16 THE COURT ATTENDANT: Please come to order.

17 Department 23 is now in session.

18 MR. MILLARD: Okay. If we could have the witness
19 sworn, please.

20 THE CLERK: Mr. Fallman, if you can raise your right
21 hand?

22 You do solemnly swear that the testimony you're
23 about to give in the cause now pending before this court
24 will be the truth, the whole truth and nothing but the
25 truth, so help you God?

26 THE WITNESS: I do.

27 THE CLERK: Thank you.

28 Will you please state your name for the record and

1 spell it, please?

2 THE WITNESS: James Fallman, F-A-L-L-M-A-N.

3 THE CLERK: Thank you.

4 TESTIMONY OF

5 JAMES FALLMAN, witness called on behalf of the Defendant:

6 DIRECT EXAMINATION

7 By MARK D. MILLARD, Attorney at Law:

8 Q. Mr. Fallman, you and I have met on -- by the
9 telephone before. I'm Mark Millard.

10 A. Right.

11 Q. And Mr. Meyer's here with me, and as you know, we're
12 here in a case called People versus Frederick Oneal Clark?

13 A. Yes, sir.

14 Q. Okay. First of all, Mr. Fallman, could you tell us
15 where you're at right now?

16 A. I'm in Crescent City, California, about 20 miles
17 from the Oregon border, on the ocean.

18 Q. A very long way from here, correct?

19 A. Somewhat.

20 Q. Okay. And what do you do?

21 A. I'm a senior deputy district attorney for Del Norte
22 County.

23 Q. And Del Norte County -- I think that's where you are
24 now. You're way up on the coast, right?

25 A. Right.

26 Q. And we're doing this by kind of a video link up,
27 which I don't know the technical term for it, but in any
28 event, you're up at a certain location. Where is that?

1 A. I'm at the Board of Prison Terms room in Pelican Bay
2 State Prison.

3 Q. Okay. And we're here in Department 23 of the
4 Sacramento Courthouse.

5 Now, sir, how long have you been with the Del Norte
6 County District Attorney's Office?

7 A. Since December 31st, 1990.

8 Q. Okay. And what do you do there?

9 A. I prosecute the felonies that are related to Pelican
10 Bay State Prison, and occasionally I'll prosecute a street
11 case, but not too often.

12 Q. Okay. When you say prosecute cases involving
13 Pelican Bay State Prison, do these cases mostly involve
14 inmates?

15 A. Ah, yes. I have prosecuted several noninmate cases,
16 but most -- well over 99 percent are inmate cases, yes.

17 Q. And what about the other percent?

18 A. Those are officer misconduct cases.

19 Q. In other words, where a correctional gets in
20 trouble?

21 A. Yes.

22 Q. Okay. Now, I'd like to take you back a couple of
23 years and ask if you know a guy by the name of Frederick
24 Oneal Clark?

25 A. Yes, I do.

26 Q. And how did you get to know Fred Clark?

27 A. Well, he perjured himself in a -- one trial that I
28 did against a man named Gary Littrell, and then he came

1 forward and admitted that he had perjured himself in the
2 trial of Gary Littrell and said that he would be willing to
3 tell the truth in the case of the People versus Elliott
4 Scott Grizzle.

5 Q. Okay. Who were Littrell and Grizzle?

6 A. Gary Littrell and Elliott Scott Grizzle are reputed
7 to be members of the so-called Aryan Brotherhood prison
8 gang.

9 Q. What is that?

10 A. That is a white supremist Nazi type group of
11 prisoners that very much, in my perspective, run activities
12 for the white race on the A and B yards and in the SHU
13 department -- the SHU means security housing unit -- at
14 Pelican Bay, as well as possibly statewide in the 33
15 prisons and have some affect out of state.

16 Q. Okay. Does the Aryan Brotherhood, so far as you
17 know, also have members that are outside prison custody?

18 A. Yes, they do.

19 Q. In other words, basically, the Aryan Brotherhood is
20 a prison gang, correct?

21 A. It's a prison gang with ramifications beyond the
22 prison.

23 Q. Is it considered a violent gang?

24 A. Absolutely.

25 Q. All right. Now, the first case that you told us
26 about involved Mr. Littrell?

27 A. Gary Littrell.

28 Q. Yes.

1 When was that prosecuted?

2 A. I don't remember the exact year, but it was probably
3 around '97 or '98.

4 Q. What was the charge?

5 A. First degree murder, conspiracy to commit murder,
6 and I believe that he was subject to three strikes -- yes,
7 he was. Three strikes.

8 Q. Okay. Without going into the details of the trial,
9 what generally had Mr. Littrell done?

10 A. Mr. Littrell had strangled his cellmate -- killed
11 his cellmate after his co-conspirator, Mr. Grizzle, had
12 mixed up a concoction of inmate-manufactured alcohol that
13 we colloquially call pruno, intermixed with methylcarbonol
14 and indomethacin which the doctors -- one of which the
15 doctors told me was some sort of a muscle relaxant. And I
16 don't remember what the pharmacological effects were of the
17 other one.

18 But the bottom line of it was that these two people
19 conspired to get Littrell's cellmate incapacitated on
20 alcohol and medicine, and then Littrell strangled him.

21 Q. Okay. Now, pruno is a kind of a prison-manufactured
22 alcohol using a bunch of fruit and, you know, things of
23 that nature, that they sort of let ferment; is that right?

24 A. Absolutely.

25 Q. Okay. After the Littrell case -- when I say the
26 case, I mean the trial -- Mr. Clark approached you in some
27 manner, correct?

28 A. Not me personally, but I believe that he approached

1 possibly Lieutenant John McKinney. I'm not sure which
2 one -- it would have had to have been one of the people --
3 prison authorities, and they alerted me to it, that he
4 wanted to talk to us.

5 Q. And what happened then?

6 A. We talked to him, and he said that he had had a
7 change of heart and that he would testify truthfully if
8 called to the stand in the second trial of People versus
9 Elliott Scott Grizzle.

10 Q. Okay. Actually, Mr. Littrell was convicted anyway,
11 wasn't he?

12 A. He was convicted of second degree murder, but he was
13 found not guilty of the conspiracy to commit murder.

14 Q. All right. Do you remember approximately when it
15 was that Mr. Clark approached someone who got in contact
16 with you regarding his change of heart?

17 A. The best I can tell you on that, it would have been
18 after -- well after the Littrell case was over and near the
19 beginning of the Grizzle trial, but -- but -- somewhat
20 prior to the beginning of the actual trial, I believe, of
21 Grizzle. Lieutenant McKinney probably could be more
22 specific.

23 There's also another person who may know the answer
24 to that, and he's in Rancho Cordova, and his name is
25 Special Agent Dan Smith of the special service unit there
26 at the Department of Corrections.

27 Q. In any event, because of Mr. Clark's contact with
28 people in the prison system, you eventually wound up having

1 a direct discussion with Mr. Clark about what he knew
2 connected with the Grizzle and Littrell case, correct?

3 A. Yes. Along with McKinney and -- I think Dan Smith
4 might have been there, but I'm not sure, and a DA intern up
5 here named Kelly Keifer. I believe she was involved in his
6 statement -- in that statement.

7 Q. Okay. Approximately when did that statement take
8 place?

9 A. I think that I first got a statement with him -- and
10 my memory could be off on this. I don't have records to
11 look at -- but I believe that that -- that I actually
12 started talking to him at the beginning of trial --
13 somewhere near the beginning of trial. I could have taken
14 his statement slightly prior to trial.

15 And the normal place that we take those statements
16 is in the room that I'm in right here.

17 And I've seen so many inmates since then I'm not
18 sure -- what I do remember is talking with him in a holding
19 cell at the Del Norte County courthouse, and my best memory
20 is that was right near the beginning of the trial.

21 Q. And when was the Grizzle trial?

22 A. Again, that probably would have been in '98. I'm
23 just guessing. I don't have those files to give you the
24 exact dates.

25 Q. You know, I have a document here, and maybe this
26 will help refresh your recollection.

27 And I understand there's some way when we're doing
28 this that we can actually feed it in, but I don't know how

1 to do. So what I think I'm going to do is --

2 A. Just tell me what it is. I might remember it.

3 Q. Yeah. What it is, is the verdict form in the
4 Grizzle case.

5 A. That will do.

6 Q. Okay. Actually, if it's okay with Frank Meyer --
7 with Mr. Meyer here, maybe I'll just read it to you.

8 MR. MILLARD: Is that okay?

9 MR. MEYER: (Nods head.)

10 Q. (By Mr. Millard) Okay. The verdict form indicates
11 that the verdict of guilty of one count of murder was
12 returned on February 19, 1999.

13 Does that sound about right?

14 A. Okay. '99 is probably what it was then. I'll go
15 with what that paper says.

16 Q. All right. And -- okay. So the trial then would
17 have been --

18 Was this one of these long trials that maybe started
19 late in '98 and finished in '99, or is this one that --

20 A. I think this trial took probably two weeks or less.

21 Q. Okay.

22 A. Somewhere in the area of two weeks.

23 Q. All right. Now, when you contacted Mr. Clark, did
24 he tell you why he had had the change of heart and decided
25 to come forward?

26 A. Yes, he did.

27 Q. And what did he say?

28 A. Um, he said that he had been willing to accept money

1 to perjure himself in the first case of Littrell where his
2 testimony apparently was partially successful in sabotaging
3 my case because they knocked our first -- our attempt to
4 get first degree murder and successfully got it down to a
5 second degree.

6 And I believe based largely on his testimony, or
7 somewhat on his testimony, that they were able to get rid
8 of the conspiracy count. That was found to be not guilty.
9 That was found not even to exist by the jury.

10 And -- I don't remember the specifics of what he
11 perjured himself as to in the Grizzle case.

12 But to answer your question, when he came forward he
13 says, they now want me to go further. He says, I have
14 someone -- I have a relative who is either in the
15 Sacramento Sheriffs Department or the Sacramento Police
16 Department. And I'm not sure which agency he said, but he
17 said I have a relative -- I don't know if that was blood
18 relative or in-law -- who has access to law enforcement
19 computers.

20 And Rascal, which is the nickname for Elliott Scott
21 Grizzle, has now asked me to do more than just perjure
22 myself like I did for his buddy Littrell. He wants me to
23 have my source who has access to law enforcement computers
24 see if they can find the home address -- or the changed
25 address from DMV records, or however law enforcement would
26 do it using a computer, which I personally am not quite
27 sure how they do that. He said I want -- Grizzle wanted
28 Clark to have Clark's relative find the -- the relatives of

1 another inmate named Brian Devlin Healy (ph) so that --
2 since Healy had been placed in the federal witness
3 protection because Healy was testifying against both
4 Littrell in case one and Grizzle in case two, that the
5 Aryan Brotherhood wanted to kill Healy, but they couldn't
6 get to him because he was in the federal witness
7 protection -- or he was in the process of
8 going into it.

9 And so what -- instead they knew he had a daughter,
10 and they wanted to find the last known address of the
11 family so that they can put a hit on the daughter.

12 Mr. Clark stated that Scott Grizzle said, we're
13 going to find the daughter, and the cops will find her
14 buried in the ground head down with her legs sticking out
15 of the ground. And he said to me, I didn't want to be part
16 of any Polly Klaas, and so I'm willing to testify
17 truthfully about this because now they're not just offering
18 me money to lie. They're offering me money to kill a
19 little girl, and I don't want anything to do with that.

20 Q. All right. And that happened somewhere around the
21 start of the Scott Grizzle trial, which would have been in
22 early 1999?

23 A. I'm assuming that that's -- that's my best memory.
24 You can double check my memory with those two officers, Dan
25 Smith -- and I'll give you his phone number if you want it.
26 Q. Okay. Well, we may ask you for that later, but I
27 think since this actually is really recorded testimony --
28 and I believe that there is, if I'm not mistaken, a

1 prohibition against phone numbers and actual addresses.

2 A. Oh.

3 Q. I think maybe we should not do that at this time.

4 A. Okay. Okay.

5 Q. Okay. So Mr. Clark told you all this information
6 that you just told us about?

7 A. Best of my recollection. And I think that's how he
8 testified in open court once he took the stand.

9 He did, in fact, take the stand and testify 180
10 degrees different from what he had testified to in the --
11 the Littrell case when he got on the stand against Grizzle.
12 And I think largely because of Clark's testimony that there
13 was a different result.

14 On the morning of trial --

15 MR. MEYER: I'm going to object to the narrative
16 form of the answer.

17 MR. MILLARD: Okay.

18 Q. (By Mr. Millard) I'm not really sure whether
19 Mr. Meyer's -- what Mr. Meyer just said came through, but
20 in any event, let's just kind of stop for a second and
21 restart.

22 A. Okay.

23 Q. Okay. In any event, Mr. Clark testified in the
24 Scott/Grizzle trial, and eventually that case came to a
25 verdict, and that verdict was --

26 A. Yes.

27 Q. -- what?

28 A. First degree murder, guilty; conspiracy to commit

1 murder, guilty; and three strikes.

2 Q. Now, am I correct that Mr. Grizzle actually had a
3 parole date coming up, I think, about two years or so down
4 the line from when his trial took place; in other words,
5 this guy was set to get out?

6 A. He was set to get out. I don't know if it was
7 precisely two years, but it was a small number of years
8 like that, yes.

9 Q. All right. And you wanted to keep him in?

10 A. Absolutely.

11 Q. And Mr. Clark helped you do that?

12 A. And who?

13 Q. Mr. Clark helped you do that?

14 A. Yes, he did.

15 Q. Okay. And I believe you have an opinion as to the
16 benefit or the value of Mr. Clark's cooperation. Could you
17 tell us what that is?

18 A. Yes.

19 Well, I also, I believe, sent a letter to the Board
20 of Prison Terms to the effect of answering the question
21 that you just asked. And I feel that he did confer benefit
22 on society by finally coming forward, even though he
23 perjured himself in case number one and telling the case
24 (sic) in case number two.

25 And the reason for that benefit is shown by the
26 result: Case number one, not guilty on the conspiracy to
27 commit murder, and only a second degree murder on the
28 actual strangler, where -- who was in the cell with the

1 victim. Whereas on case number two, the large difference
2 in the case was Clark's testimony. I got a first degree
3 murder --

4 MR. MEYER: I'm going to object. I'm going to
5 object on the narrative, and the opinion is irrelevant.

6 Q. (By Mr. Millard) Well, okay -- why don't we just
7 maybe kind of tie this up this way, Mr. Fallman.

8 Mr. Clark -- as a prosecutor you felt that
9 Mr. Clark's testimony was of benefit to society; is that
10 fair to say?

11 A. Yes.

12 Q. Okay. And at some point did you become aware that
13 there had been a request that Mr. Clark be prosecuted
14 for -- I believe it was a felony battery on a psychologist
15 in Pelican Bay by the name of Dr. Doran?

16 A. I don't recall that. That's possible. I just don't
17 remember now.

18 Q. Okay. That wasn't something that -- it wasn't a
19 case that you were asked to review as to whether it should
20 be prosecuted then?

21 A. I don't remember that case. It's possible. I see
22 hundreds of cases. I'm probably going to review a hundred
23 cases today after we're through here. I don't remember
24 that one. I don't remember that doctor's name.

25 Q. Okay. All right.

26 Well, since you have so many cases to review, I
27 think at least for now I will conclude at least on this
28 topic and let Mr. Meyer ask further questions that he has.

1 A. Okay.

2 Q. Thank you.

3 CROSS-EXAMINATION

4 By FRANK C. MEYER, Deputy District Attorney:

5 Q. Good morning, Mr. Fallman. How are you?

6 A. Fine, sir.

7 Q. And you are aware of what Mr. Clark is being
8 prosecuted for in this case?

9 A. Ah, yes, I believe I am.

10 Q. And you're aware that he's already been convicted of
11 first degree murder with special circumstances?

12 A. Yes, yes.

13 Q. Now, in the -- and I think just to make it simple
14 we'll call it the Littrell trial, which was the first one,
15 and the Grizzle, which was the second one.

16 A. Right.

17 Q. So trial one and trial two.

18 A. Yes, sir.

19 Q. And you were aware Mr. Clark testified for the
20 defense in the Littrell trial?

21 A. Yes.

22 Q. And then he came forward afterwards and spoke to you
23 about wanting to tell the truth, as he says, and testify
24 for you in the Grizzle case; is that right?

25 A. Or to testify truthfully -- what we thought was
26 truthfully as he explained it to us in the Grizzle case,
27 yes.

28 Q. All right. Was there any way you could corroborate

1 what Mr. Clark was telling you?

2 A. He knew the age of Healy's child, and there was no
3 way that Healy would have told that to him because Healy
4 was an Aryan Brotherhood dropout, a hater of black people.
5 Healy was a white supremacist. There's no way that a white
6 supremacist, in my experience with the Aryan Brotherhood up
7 here, is going to tell a black man the name and age of his
8 child, and the man knew that.

9 Q. Well, if what Mr. Clark --

10 A. Clark knew that.

11 Q. If Clark had these connections where he could get
12 this information from another source, he could get it from
13 someone other than Mr. Healy; isn't that right?

14 A. Well, I suppose, but he had very specific
15 information.

16 Q. Now, why did you make the deal with Mr. Clark?

17 A. What deal are you talking about?

18 As far as a deal is concerned, I have a policy. I
19 will send a letter to the Board of Prison Terms for
20 anybody -- any inmate whom I feel has conferred a benefit
21 on society, and I did in this case follow my normal thing,
22 and I did send a letter for him.

23 Q. Did Mr. Clark --

24 A. The way --

25 Q. Did Mr. Clark receive any kind of benefit for coming
26 forward and testifying in your trial with Grizzle?

27 A. Um, you know, I don't know what the Board of Prison
28 Terms did in his particular case, but now that you mention

1 the words benefit, I'm thinking of one other thing that we
2 tried to do. We tried -- we asked for out of state -- to
3 see if we could get him a courtesy parole out of state, and
4 we attempted to do that with the State of Oregon, and that
5 was unsuccessful.

6 Q. Do you know why that was unsuccessful.

7 A. Ah --

8 MR. MILLARD: Excuse me. Before we go into that,
9 could I ask the foundation be laid as to whether he has
10 personal knowledge as to why he was unsuccessful.

11 Q. (By Mr. Meyer) Did you make a request to the State
12 of Oregon for him to be paroled on a courtesy supervision?

13 A. I did not personally involve myself in the process.
14 What I know about it is hearsay.

15 Q. But you do know that it was declined?

16 A. Yes.

17 Q. And that it was declined because of Mr. Clark's
18 record. He had a sex offense and where he was going was
19 close to a school?

20 MR. MILLARD: Objection, objection. Move to strike
21 that. Mr. Fallman just said he only has hearsay
22 information, and that's an improper question.

23 Q. (By Mr. Meyer) You have no personal knowledge of
24 why Mr. Clark's request to go out of stay was declined?

25 A. I have only hearsay knowledge of it.

26 Q. What benefit did the Del Norte County District
27 Attorney Office give Mr. Clark for his testifying?

28 A. Ah, the only benefit that I can recall, is after he

1 testified I believe I did send the letter to the Board of
2 Prison Terms, and I requested of CDC that they attempt to
3 see if they could get a cooperative courtesy parole out of
4 state in Oregon.

5 Q. Was there --

6 A. I encouraged it.

7 Q. Was there any attempt -- I'm sorry.

8 A. I encouraged them to see if they could get the
9 parole -- the kind of parole that he wanted.

10 Q. Was there an attempt to reduce his parole date?

11 A. I don't recall that part. I don't recall that.

12 Q. You didn't prosecute Mr. Clark for perjury, did you?

13 A. No.

14 Q. So he received that benefit from you?

15 A. If you call that a benefit, I suppose you're right.

16 Q. Well, you could have prosecuted -- you could have --

17 A. He wasn't -- he was not prosecuted, and we could
18 have.

19 Q. Did you discuss that with him, that you would not
20 prosecute him on the perjury charge?

21 A. I don't know that we discussed that. We might have.
22 I mean, it's -- it's -- a DA is not likely going to
23 prosecute someone for perjury who comes forward voluntarily
24 and then testifies in another case.

25 We may have discussed that, but I don't remember
26 that specifically. Again, I would defer to Lieutenant John
27 McKinney and I believe Special Agent Dan Smith who would
28 have been present during any such --

1 The other thing is I would ask you to look at the
2 court transcripts, because if that -- if that's there, then
3 it would be in the court transcripts from the trial because
4 we would have said it on the record.

5 Q. All right. So did Mr. Clark -- in his discussion
6 with you he requested to be paroled out of state.

7 A. That's --

8 A. Yes.

9 Q. -- that's the only thing he asked for?

10 A. Well, I don't know if he asked or I offered the
11 letter to the Board of Prison Terms, but he certainly was
12 willing to have me do that, and I told him it was my normal
13 practice to do that.

14 So he was aware that it would be done if I thought
15 he'd confer a benefit.

16 Q. Well, who was requesting that this be done?

17 A. I -- I don't know that he specifically requested it.
18 I may have told him that I will do that for him because I
19 do it for any inmate who testifies in a way that I think is
20 beneficial to society.

21 Q. Well, did you just pick Oregon out of the hat, as to
22 where he'd be?

23 A. You're asking as to the place?

24 Q. Yes.

25 A. You're asking as to the place?

26 I believe that -- now this is hearsay, but I believe
27 that he wanted Oregon because he had a grandmother who
28 lived there.

1 Q. Mr. Clark didn't tell you himself where he wanted to
2 go?

3 A. He may have said that, but I don't remember the
4 source of that. That may have come from McKinney to me.
5 It may have come straight from Clark to me. I don't
6 remember.

7 Q. In your discussion with Mr. Clark about his reason
8 for coming forward, if Mr. Clark had not come forward and
9 provided this information and this had actually taken
10 place, he could have been prosecuted as a co-conspirator if
11 anything had happened to Healy's family; isn't that right?

12 A. If what had happened?

13 Q. Well, you said that there was a supposed hit going
14 to be done on somebody in Healy's family.

15 A. If he were an active participant. Mere knowledge of
16 the crime doesn't make you an accomplice, as you know,
17 counselor --

18 Q. Well, Mr. Fallman, doesn't getting --

19 MR. MILLARD: Excuse me. Mr. Fallman hadn't
20 finished his question -- answer.

21 MR. MEYER: Well, Mr. Fallman didn't answer the
22 question he was asked.

23 THE WITNESS: I'm trying to answer your question,
24 sir.

25 Q. (By Mr. Meyer) All right. But the question -- let
26 me ask the question again, Mr. Fallman.

27 The question that -- is that you had indicated that
28 Clark had come forward and said that the Aryan Brotherhood

1 wanted him to use this contact that he had to gain
2 information --

3 A. Right.

4 Q. -- about where Healy's family lived?

5 A. Right.

6 Q. Okay.

7 A. Right.

8 Q. And if Mr. Clark had done that, that's certainly
9 more than knowledge of the conspiracy?

10 A. Oh, certainly, if he had done that.

11 Q. Yes.

12 A. Right.

13 Q. Okay.

14 A. If he had done that and relayed it to a member of
15 the Aryan Brotherhood. Neither of those happened to my
16 knowledge.

17 Q. To your knowledge, did anything ever happen to
18 Mr. Healy's family?

19 A. Not to my knowledge.

20 Q. In your discussion with Mr. Clark, did he indicate
21 to you that he didn't want to get out of prison?

22 A. I don't recall that. I know that he did at one
23 point say that he didn't want to parole to Sacramento.

24 So my best memory of that would be that he wanted to
25 get out, but not to parole to Sacramento. He may have said
26 something like that, but I don't remember that.

27 Q. And I just want to ask you a question in terms of
28 the sentence Clark was serving. As far as you know, he was

1 doing a determinate term?

2 A. I believe so.

3 Q. And his parole date was coming up?

4 A. Yes, sir. I believe so.

5 Q. And your knowledge as a prosecutor, when an inmate
6 has served their determinate time, the state has to release
7 them?

8 A. Well, depends if they're MDSO or something. Not
9 necessarily, but --

10 (Court reporter interrupted.)

11 THE COURT ATTENDANT: Hold on. Mr. Fallman, hold
12 on. The court reporter didn't get what MDSO was.

13 (Record read back.)

14 MR. MILLARD: Could I request that we start over
15 with a new question and get the answer again?

16 MR. MEYER: Okay. Let's try again.

17 Q. (By Mr. Meyer) You didn't have any knowledge that
18 Mr. Clark was MDSO offender?

19 A. No, I didn't.

20 Q. And other than that, when a determinate sentence has
21 been fully served the inmate is released; isn't that right?

22 A. Released on parole, I believe.

23 Q. Okay. Thank you, Mr. Fallman.

24 A. Thank you, sir.

25 REDIRECT EXAMINATION

26 By MARK D. MILLARD, Attorney at Law:

27 Q. Mr. Fallman, I have a few more questions just to
28 follow up, if I could?

1 A. Sure.

2 Q. Okay. First of all, as I think Mr. Meyer has
3 established, by the time Mr. Clark testified in the
4 Scott/Grizzle case, he was coming up for parole, and you
5 knew that, didn't you?

6 A. I knew he had a parole date coming.

7 Q. Right.

8 And you also know because of your connection with
9 law enforcement that if a person is actually told -- the
10 Department of Corrections people, their staff, their
11 psychologists, their psychiatrists, that he doesn't think
12 he's ready to parole, he has violent tendencies and he's
13 concerned about getting out, there are many ways that
14 potentially an inmate could be kept in; isn't that correct?

15 A. Ah, that -- I'm not certain of what you're driving
16 at there.

17 Q. Well, if a person --

18 Actually, I think you and I and maybe Mr. Meyer are
19 kind of old, and we use terms like MDSO. I think it's
20 actually MDO now, isn't it, mentally disordered offender?

21 A. Right.

22 Q. Okay. And that involves a situation where a person
23 has been in custody, and he has got a parole date coming
24 up, and he's got serious mental problems, and there's a
25 procedure for keeping that kind of a person off the
26 street; isn't that correct?

27 A. There is a civil commitment procedure, if that's
28 what you're talking about.

1 Q. Yeah.

2 And the MDO procedures, one civil commitment, way to
3 keep a guy in under civil rules, correct?

4 A. I believe so.

5 Q. Okay. And that's not the only way. There's other
6 ways. There's this 5150 method, where a person is a danger
7 to himself or others; isn't that correct?

8 A. That's possible, I suppose.

9 Q. Okay.

10 A. I haven't seen that personally happen, but I think
11 it could.

12 Q. All right. And if Mr. Clark had told various people
13 in the prison system, such as staff psychiatrists and other
14 staff members, that he didn't think he was supposed to get
15 out, you know from your connection with the California
16 Department of Corrections that they would make records of
17 that; isn't that true?

18 A. Well, I'm sure if he said something like that they
19 would record it.

20 Q. Okay. And with regard to Mr. Clark now. One topic
21 that we didn't cover involves his personal situation before
22 he testified, after he was disclosed as a witness -- which
23 I take it you did at some point, didn't you?

24 A. Say that again.

25 Q. At some point --

26 A. We put him on a witness list --

27 Q. I'm sorry?

28 A. We put him on a witness list and disclose it to the

1 defense.

2 Q. That's what I meant.

3 Okay. So the defense in the Scott/Grizzle case knew
4 at some point before trial that Mr. Clark would be a
5 witness, correct?

6 A. I believe so.

7 Q. Okay. And then they certainly knew it after he
8 testified, correct?

9 A. Yes -- oh, yes.

10 Q. Now, at some point did you become aware of
11 information that Mr. Clark was in danger because he was a
12 witness in the Grizzle trial?

13 MR. MEYER: Well, I'm going to object that that
14 would be hearsay.

15 Q. (By Mr. Millard) Okay. It's not offered for the
16 truth of the matter, and I'll just ask you if you could
17 tell us yes or no.

18 Did you become aware of information that Mr. Clark's
19 life might be in danger from the Aryan Brotherhood?

20 A. Yes.

21 MR. MEYER: I'm going to make the same objection.

22 Q. (By Mr. Millard) Okay. Now, without going into the
23 details of what you learned, what I'd like you to do is
24 tell us if you communicated to Mr. Clark concern about
25 Mr. Clark's safety from the Aryan Brotherhood?

26 A. Um, I don't believe it was I necessarily personally,
27 but I believe it would have been Lieutenant McKinney.

28 MR. MEYER: Well, then I'm going to object if he

1 didn't personally do it. He can't testify to what was
2 done.

3 Q. (By Mr. Millard) Okay. Were you personally present
4 when anyone communicated to Mr. Clark that his safety was
5 in danger as a result of his testifying against a member of
6 the Aryan Brotherhood?

7 A. I believe the subject came up in the holding cell
8 conversation that I've discussed with you earlier at the
9 Del Norte County jail. It may have been Mr. Clark --

10 MR. MEYER: Objection, the question's been answered.

11 Q. (By Mr. Millard) Well, okay. When the subject came
12 up in the holding cell concerning Mr. Clark's safety as a
13 result of this testimony, can you tell us what was said?

14 A. I don't remember the specifics of it, but I am
15 reasonably certain that it came up.

16 Q. Okay. Did you have a conversation with Mr. Clark
17 either by yourself or with one of the other officers
18 concerning efforts to protect Mr. Clark while he was in
19 prison as a result of his testimony against the Aryan
20 Brotherhood?

21 A. I would have never had any conversation with
22 Mr. Clark just by myself. I would have always had an
23 officer there.

24 Um, and I -- that kind -- how he would be protected
25 once the people -- the prison is aware that there's a
26 danger is left up to the prison authorities. It's not up
27 to me.

28 Q. Did you communicate to any prison authority that you

1 believe Mr. Clark needed protection from the Aryan
2 Brotherhood?

3 A. Yes. I talked to McKinney, and he was fully aware
4 of that, and I was aware of that, and Dan Smith I believe
5 was fully aware of that.

6 Q. And in addition to your communication with the
7 people you just mentioned, did you do anything else to try
8 to insure that Mr. Clark be protected while he was in
9 prison because of threats by the Aryan Brotherhood?

10 A. I may have put --

11 MR. MEYER: I'm going to object to the question as
12 asked, if there were threats by the Aryan Brotherhood.
13 That's a fact not in evidence.

14 MR. MILLARD: Well, I'll rephrase it.

15 Q. (By Mr. Millard) You had serious concerns about
16 Mr. Clark's safety from the Aryan Brotherhood; is that
17 correct?

18 A. Yes.

19 Q. What did you do as a result of those concerns?

20 A. I discussed it with people who would have the power
21 in CDC to look into safety concerns for him. Lieutenant
22 McKinney, who -- and the Special Agent Smith, who were my
23 two chief special agent -- or special investigators on
24 those two trials, on Grizzle and Littrell. And I may have
25 put --

26 If you have a copy of the letter I wrote to the
27 Board of Prison Terms, it will speak for itself. I may
28 have addressed something like that, that I had concerns for

1 his safety, in the letter that I addressed to the Board of
2 Prison Terms because I normally do.

3 Q. Now, just going back to this subject of whether
4 Mr. Clark would have been subject to prosecution for
5 conspiracy, when he was asked to obtain and provide
6 information to the Aryan Brotherhood concerning the
7 daughter of the witness --

8 Are you with me?

9 A. I think so.

10 Q. Okay. Now, your understanding is -- strike that.
11 Let me start over.

12 You understand the laws related to conspiracy,
13 correct?

14 A. Well, I try to.

15 Q. Okay. And in response to one of Mr. Meyer's
16 questions, you indicated that merely having knowledge that
17 somebody was trying to commit a crime doesn't make you
18 subject to prosecution for perjury.

19 Could you explain that?

20 A. Well, in certain --

21 MR. MEYER: Wait. Hold on. Excuse me.

22 Prosecution for conspiracy, not for perjury.

23 Q. (By Mr. Millard) Well, Mr. Meyer asked you if when
24 Mr. Clark learned that the Aryan Brotherhood was trying to
25 get information concerning the daughter of the witness so
26 that they could have her killed, I think you very
27 graphically told us that they wanted to get her address and
28 location so that they could kill her and put her in a

1 shallow grave upside-down or something like that.

2 You remember responding to Mr. Meyer's questions
3 about that?

4 A. Yeah, except that I thought his question was about
5 perjury, not conspiracy. Maybe I'm wrong.

6 Q. Okay. Well, I recall that he asked you, you could
7 have prosecuted Mr. Clark for conspiracy as a result of him
8 knowing about what the Aryan Brotherhood was trying to do
9 to the little girl.

10 A. That's -- that's a complicated question.

11 First of all, normally you need an overt act in
12 furtherance of the conspiracy to prosecute somebody under
13 California Penal Code Section 182, I believe it is.

14 There -- and normally under the US Code, even in the
15 federal system, you normally need an overt act. But I'm
16 told by US attorneys there are certain federal statutes
17 where you don't need an overt act for certain federal
18 conspiracies.

19 But since I deal with state conspiracies I look for
20 overt acts, and I wouldn't be -- if he didn't do anything
21 to follow through to ask his relative to -- to look for
22 this information or attempt to send it in any way to the
23 Aryan Brotherhood which asked him for it, I probably
24 wouldn't be prosecuting him.

25 If he did any of those things, certainly I would
26 feel he's subject to prosecution for conspiracy, if he did
27 any overt act in furtherance of the conspiracy.

28 Q. Right.

1 But just because the Aryan Brotherhood came to him
2 and asked him to find that information out doesn't make him
3 guilty of any kind of conspiracy, does it?

4 A. That -- that looks more like a solicitation of a
5 crime on their part if he doesn't act on it -- on his part.

6 Q. There's no crime on his part?

7 A. Right, not yet.

8 Q. Okay. I think that covers almost everything. Could
9 I have just a minute, Mr. Fallman?

10 A. Sure.

11 (Pause.)

12 Q. (By Mr. Millard) There was one other topic that I
13 wanted to ask you about.

14 You indicated earlier that you also prosecute a
15 certain number of cases involving misconduct by CDC
16 officers at Pelican Bay State Prison, correct?

17 A. I've had some cases, a small number.

18 Q. Did one of those cases involve a defendant by the
19 name of Gomez?

20 MR. MEYER: Well, I'm going to --

21 THE WITNESS: You mean, Garc --

22 MR. MEYER: Wait. I'm going to object.

23 What is the relevance of other cases that he's
24 prosecuted that didn't involve Mr. Clark?

25 MR. MILLARD: Well, this involves another witness
26 that may be a potential witness in this case. And I think
27 we talked about this, Mr. Meyer. I'd like to ask him about
28 this.

1 MR. MEYER: I'm going to object that it's
2 irrelevant.

3 Q. (By Mr. Millard) Okay. Mr. Meyer (sic), there is
4 an objection on the table that the judge may have to rule
5 on if this becomes relevant, but if we could just take a
6 second here.

7 Let me ask this. Did you become -- did you come
8 into communication with a CDC inmate by the name of Matthew
9 Kramer (ph) several years ago?

10 A. Yes.

11 Q. How did you meet Matthew Kramer?

12 A. It was a part of the investigation of the case of
13 People of the State of California versus Jose Ramon Garcia.

14 Q. Okay. And what did Mr. Matthew Kramer have to do
15 with that case?

16 A. He was a witness in that case.

17 Q. Okay. And what was the general nature of the?
18 allegation against Mr. Garcia?

19 A. That he had personally assaulted inmates and
20 conspired with inmates and other officers to set up child
21 molesters to be beaten or have their throats cut.

22 Q. And Mr. Kramer actually testified in that trial?

23 A. Yes, he did.

24 Q. Okay. There's one other thing. During the course
25 of your work in connection with prosecuting cases at
26 Pelican Bay, you've come to learn about the practices and
27 activities of the Aryan Brotherhood; is that correct?

28 A. Yes.

1 Q. And is the same true that you've come to learn about
2 the standards and the procedures and the practices of the
3 correctional officers?

4 A. Somewhat.

5 Q. Yeah.

6 Do you know whether some of the correctional
7 officers that have been guilty of misconduct have had
8 connections with the Aryan Brotherhood?

9 A. I believe they have.

10 Q. And could you tell us -- if we're going into any
11 area that's a sensitive area involving an ongoing
12 prosecution or investigation, then just let me know and
13 we'll stop.

14 But putting that aside, could you kind of elaborate
15 or explain your last answer?

16 A. Ah, I really can't because I'm relying on data which
17 is under a gag order from the federal court, FBI data. But
18 I can tell you where you can find your answer.

19 Q. Yes, sir?

20 A. You can find your answer -- you can find your answer
21 in the trial transcripts in the Northern District Federal
22 Court in San Francisco in the case of United States of
23 America versus Jose Ramon Garcia and Michael Edward Powers.

24 Q. Mr. Fallman, thank you very much.

25 A. Thank you.

26 RECROSS-EXAMINATION

27 By FRANK C. MEYER, Deputy District Attorney:

28 Q. Mr. Fallman, I just want to clarify here. I

1 apologize if my question was not clear enough.

2 In terms of Mr. Clark approaching you about
3 testifying for the prosecution in the Grizzle case, isn't
4 it correct that Mr. Clark was concerned that if he did what
5 the AB was asking him to do that he would be part of a
6 conspiracy to commit murder?

7 A. I think that's fair to say because he said, quote,
8 "I don't want to be part of any Polly Klaas for these
9 guys."

10 Q. All right. So my question to you was, if Mr. Clark
11 had done these things that the AB -- he alleges the AB was
12 asking him to do --

13 A. Right.

14 Q. -- if he had gotten this information, if he had passed
15 it along --

16 A. Right.

17 Q. -- that would have made him a co-conspirator in any
18 crime that was committed?

19 A. I fully agree on that, if it had gone that far.

20 Q. That's what I was asking you, and I apologize if it
21 wasn't clear --

22 A. Got it.

23 Q. -- to you.

24 Obviously, his just being asked something and coming
25 to you and giving that wouldn't make him, but if he had
26 gone

27 forward with it as he was asked to do --

28 A. Right.

1 Q. -- that would have made him a co-conspirator?

2 A. Oh, I believe so.

3 Q. Okay.

4 (Pause.)

5 Q. (By Mr. Meyer) Thank you, sir. I have nothing
6 else.

7 A. Thank you.

8 FURTHER REDIRECT EXAMINATION

9 By MARK D. MILLARD, Attorney at Law:

10 Q. Just a question to kind of tie up that last point,
11 Mr. Fallman.

12 There was never any indication that Mr. Clark ever
13 agreed to provide any information to the Aryan Brotherhood
14 when they asked him to find out about the whereabouts or
15 the address of the little girl, was there?

16 A. No. I believe there were indications that he had
17 used his source in the Sacramento law enforcement area
18 somehow in the first case, but -- Littrell in some way, and
19 I don't remember exactly what his testimony was, and I
20 haven't reviewed for this -- for my testimony here. I'd
21 have to go to archives and pull this stuff out, and I just
22 didn't do that.

23 I believe he did do some things in that regard in
24 the first case, but certainly not in the second case.

25 Q. Well, in the first case was there ever any
26 indication that he had used a source or done anything to
27 endanger anyone outside the prison?

28 A. I would have to defer to -- to Lieutenant McKinney

1 on that issue because I just don't remember well enough
2 what -- what was said on the first case or the trial
3 transcripts.

4 You could look at those in the first case, the
5 Littrell case, and that would bring out the answer to your
6 question. I don't remember the answer to that.

7 Q. Well, if Mr. Clark had done something and provided
8 information or done something else to help the Aryan
9 Brotherhood harm someone outside the prison system, that
10 would have come to your attention, wouldn't it?

11 A. Well, if you're talking about physical harm, that's
12 one thing.

13 I believe he said that he received \$500 to take the
14 stand and perjure himself in the Littrell case because the
15 AB told him since we're white supremacists and we hate
16 blacks, if we hire you to take the stand and lie for us and
17 do whatever it is that they may have asked him to do with
18 the computer with his friend, then they figured a jury
19 would believe it because it would be coming from a black
20 man who the whites -- who Grizzle -- I mean, who Littrell
21 would allegedly hate because he's a member of this white
22 supremacist group.

23 And the answer to the question would be that would
24 harm society, just the fact that he perjured himself for
25 these guys.

26 It's certainly not a negative effect on society
27 because we didn't get a conviction for the conspiracy to
28 commit murder, and we got the first degree murder knocked

1 down to a second.

2 Q. I understand that. But what I'm really trying to
3 kind of just make sure we have a current understanding on
4 is, there was never any indication that Mr. Clark used his
5 source, whatever that may have been, or did anything that
6 brought about physical harm to anybody outside the prison;
7 isn't that true?

8 A. Right. I don't recall that it ever came to physical
9 harm. I'm not -- I can't go so far as to say some harm of
10 some legal sort was not caused by whatever he was doing in
11 case number one and his contact in the Sacramento law
12 enforcement computer area. I just don't remember.

13 Q. Okay. I understand.

14 And when you say that some legal harm came to the
15 first case because Mr. Littrell was convicted of second
16 degree murder and not first degree murder and he was
17 acquitted on the conspiracy, that means what you're saying
18 is that you didn't get a conviction for the highest crime
19 that had been charged, correct?

20 A. Right.

21 Q. Okay.

22 A. And I think that's directly attributable to the
23 effective perjurious testimony of Mr. Clark --

24 Q. I understand. But in terms --

25 A. -- in that case.

26 Q. In terms of harm to society that might relate to
27 Mr. Littrell's getting out of prison, based on what the
28 Board of Prison Terms has been doing with parole, there's

1 really no question that Mr. Littrell will never get out,
2 whether it's a second degree murder or a first degree
3 murder; isn't that true?

4 MR. MEYER: I'm going to object that that's -- I'm
5 going to object that that's speculation.

6 Q. (By Mr. Millard) Okay. Well, Mr. Littrell's
7 sentence, even on the second degree murder, means that he
8 will never get out of prison unless somebody decides to
9 parole him. We know that, don't we?

10 A. That, and he was already doing three strikes life
11 for a conviction out of San Bernardino before this case.
12 So the net effect is he probably will stay in prison
13 anyway.

14 Q. Okay. That's all I have. Thank you.

15 FURTHER RECROSS-EXAMINATION

16 By FRANK C. MEYER, Deputy District Attorney:

17 Q. Mr. Fallman, just since you brought it up, what
18 specifically did Mr. Clark say in the Littrell trial --
19 what was the perjured testimony that he gave?

20 A. That's why I would need to read the transcripts. I
21 can't remember. I just know it was night and day. He
22 changed his story between this trial and the one -- the
23 second trial.

24 And the new element in the second trial was the
25 Polly Klaas aspect and the fact that he says he's being
26 asked to do more than just lie, and he's being asked to get
27 information that would cause a little girl to die.

28 Q. Okay. And one other thing that you said about

1 Mr. Littrell and Grizzle is that they are purported members
2 of the Aryan Brotherhood?

3 A. Right.

4 Q. You use the word purported?

5 A. Well, after trying them and talking to many, many
6 inmates about them and knowing how the gang works, I
7 believe they are members, but that's my opinion, and they
8 continue to deny that.

9 Q. Okay. Thank you. I have nothing else.

10 A. Thank you.

11 MR. MILLARD: Thank you.

12 THE COURT ATTENDANT: Thank you, Mr. Fallman.

13 THE WITNESS: Thank you.

14 THE COURT ATTENDANT: I'll hang up for you.

15 THE WITNESS: Okay.

16 THE COURT ATTENDANT: The court reporter wants to
17 know if we're officially off the record.

18 MR. MILLARD: Yes.

19 MR. MEYER: Yes.

20 (Proceedings recessed.)

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1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

2 STATE OF CALIFORNIA)
3 COUNTY OF SACRAMENTO) ss.

4

5 I, ARACELI PLASENCIA, hereby certify that I am an
6 Official Certified Shorthand Reporter, and that at the
7 times and places shown, I recorded verbatim in shorthand
writing all the proceedings in the following described
action completely and correctly, to the best of my ability:

7

8 Court: SUPERIOR COURT OF CALIFORNIA,
9 IN AND FOR THE COUNTY OF SACRAMENTO.10 Judge: HON. THOMAS M. CECIL,
11 Case: THE PEOPLE OF THE STATE OF CALIFORNIA
12 -vs-
13 FREDERICK ONEAL CLARK, Defendant.

14 Case No.: 99F09138.

15 Date: FRIDAY, OCTOBER 18, 2002.

16 I further certify that my said shorthand notes
17 have been transcribed into typewriting, and that the
18 foregoing pages 2 through 39 constitute an accurate and
19 complete transcript of all of my shorthand writing for the
20 dates and matter specified.

21 Dated: Wednesday, May 4, 2005, at Sacramento, California.

22
23 *Araceli Plasencia*
24 ARACELI PLASENCIA, CSR No. 868725 ---oo--- **COPY**
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